

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	
)	
JEFFERSON COUNTY, ALABAMA,)	Case No. 11-5736-TBB-9
a political subdivision of the State of)	
Alabama,)	Chapter 9 Proceeding
)	
Debtor.)	

**MOTION TO SET DEADLINE AND PROCEDURES FOR FILING OBJECTIONS
TO THE PETITION AND TO APPROVE FORM AND MANNER
OF PUBLICATION OF NOTICE REQUIRED BY 11 U.S.C. § 923**

Jefferson County, Alabama, the debtor in the above-referenced case (the “County”), moves the Court pursuant to 11 U.S.C. §§ 105, 901(a), 921, and 923, and Rule 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for the entry of an order (1) setting a deadline and other procedures for the filing of any objections to the County’s Chapter 9 petition and (2) approving the proposed form and manner of publication of the notice required under 11 U.S.C. § 923, as follows:

BACKGROUND

A. Procedural Posture.

1. On November 9, 2011 (the “Filing Date”), the County filed a voluntary petition for relief under Chapter 9 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

2. The County is a political subdivision of the State of Alabama.

3. No official committee of unsecured creditors has been appointed in the County’s Chapter 9 case.

B. County's Background.

4. Contemporaneously herewith, the County filed its Memorandum in Support of Eligibility (the "Memorandum"). The Memorandum contains a thorough description of the County, its debt structure and the events leading up to the commencement of the County's Chapter 9 case.

JURISDICTION AND NOTICE

5. The County brings this motion (the "Motion") pursuant to 11 U.S.C. §§ 105, 901(a) 921, and 923, and Bankruptcy Rule 2002.

6. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334(b). The Motion is a core proceeding under 28 U.S.C. § 157(b). Venue of the County's case and the Motion is proper before the Court under 28 U.S.C. §§ 1408 and 1409.

7. The County will serve a copy of this Motion on all parties on the Master Service List, as that term is defined in the Motion to Establish Notice, Service, and Case Management Procedures Pursuant to Sections 102(1)(A) and 105 of the Bankruptcy Code and Bankruptcy Rules 2002(m) and 9007 filed contemporaneously herewith by the County. The Motion shall be served by electronic mail or, where an electronic mail address is not known or available, by facsimile or, where a facsimile number is not known or available, by overnight delivery.

SUMMARY OF RELIEF REQUESTED

8. Section 921 of the Bankruptcy Code provides that upon the filing of an objection to a Chapter 9 County's petition, the bankruptcy court, after notice and a hearing, may dismiss the petition if the County did not file the petition in good faith or if the petition does not meet the requirements of the Bankruptcy Code. *See* 11 U.S.C. § 921(c). If the petition is not dismissed, Section 921 instructs the bankruptcy court to enter the order for relief. *See id.* § 921(d). To

promote the efficient administration of the County's case, the County requests that the Court set a deadline and establish procedures for the filing and consideration of any objections to the County's Chapter 9 petition.

9. Section 923 of the Bankruptcy Code provides that there shall be given notice of the commencement of a case under Chapter 9 and notice of an order for relief under chapter 9. *Id.* § 923. Such notice shall be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the district in which the case is commenced, and in such other newspaper having a general circulation among bond dealers and bondholders as the court designates. *Id.*

10. Attached hereto as Exhibit A is a draft notice of the commencement of the County's case and the order for relief in the County's case (the "Notice"). The County requests that the Court approve the form of the Notice and find that the Clerk of Court's mailing of the Notice to the creditor matrix uploaded in this case and publication of the Notice in *The Birmingham News* and *The Bond Buyer* for three consecutive weeks satisfies the requirements of Section 923 of the Bankruptcy Code.

RELIEF REQUESTED

A. **Request for Approval of Proposed Procedures for the Filing of Any Objections to the Petition.**

11. Section 921(c) of the Bankruptcy Code provides that, if any objection is filed to a Chapter 9 petition, the bankruptcy court, after notice and hearing, may dismiss the petition if the Chapter 9 debtor did not file the petition in good faith or if the petition does not meet the requirements of the Bankruptcy Code. If the petition is not dismissed under Section 921(c), then the court shall order relief in the case under Chapter 9 of the Bankruptcy Code. *Id.* § 921(d).

12. To facilitate the prompt resolution of any challenges to the County's good faith filing of this case and the satisfaction of the requirements of the Bankruptcy Code by the County's Chapter 9 petition, it is prudent and practical for the Court set a deadline and establish other procedures for the filing of any objections to the County's Chapter 9 petition. Establishing a deadline for the filing of objections to the petition will promote efficiency and judicial economy and will resolve promptly any possible challenges to the Court's jurisdiction over the County's case. *See, e.g., In re City of Vallejo, California*, Case No. 2008-26813 (Bankr. E.D. Cal., May 29, 2008) (order at Docket No. 49 establishing procedures for challenges to city's Chapter 9 petition). If there are objections that might be raised to the County's petition, it is in the best interests of all interested parties that those objections be heard and resolved as soon as practicable, in order to enable the Court to enter its order for relief pursuant to Section 921(d) of the Bankruptcy Code and to permit the County and its creditors to focus their attention on the County's substantive efforts to adjust its debts pursuant to a Chapter 9 plan. Protracted or piecemeal attacks regarding the County's eligibility to file a Chapter 9 petition would consume unnecessarily the resources of both the County and this Court and delay the resolution of the County's case.

13. The County requests that the Court set as the deadline for the filing of any objections to the County's Chapter 9 petition a date that is approximately thirty (30) days after the Filing Date (the "Objection Deadline"). This deadline provides the County with sufficient time to provide notice, by publication and otherwise, of the commencement of its Chapter 9 case to its creditors and other parties in interest and provides creditors and other parties in interest with sufficient time to investigate, prepare, and file with the court any objections they might have to the County's petition.

14. Additional procedures should be adopted to govern the filing and prosecution of any objections to the County's petition. Specifically, the County requests that the Court require that any objections (a) be filed with the Court in writing by the Objection Deadline; (b) state with specificity the facts and legal authorities in support of such objections and otherwise comply with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of this Court; and (c) be advocated in person at any and all hearings on such objections. Further, the County requests that if no objections to the petition are filed timely and properly, the Court promptly enter the order for relief in the County's case pursuant to Section 921(d) of the Bankruptcy Code.

15. If any objections are filed timely and properly to the County's petition, a hearing on such objections must be held pursuant to Section 921 of the Bankruptcy Code. The County proposes that, if any objections are filed timely and properly, the Court should hold a status hearing on such objections (the "Status Hearing"), at which time the Court shall schedule the final hearing on such objections.

B. Request for Approval of Notice of Commencement of Case.

16. Section 923 of the Bankruptcy Code provides as follows:

There shall be given notice of a commencement of a case under this chapter, notice of an order for relief under this chapter, and notice of the dismissal of a case under this chapter. Such notice shall also be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the district in which the case is commenced, and in such other newspaper having a general circulation among bond dealers and bond holders as the Court designates.

11 U.S.C. § 923.

17. The notice requirement of Section 923 of the Bankruptcy Code is intended to serve the requirements of due process, as set down by the Supreme Court in cases such as *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950). *See Collier on*

Bankruptcy, ¶ 923.03 (15th ed. 2002); *see also Mullane*, 339 U.S. at 314 (holding that a fundamental requirement of due process “is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”).

18. As required by Section 923 of the Bankruptcy Code, the County has prepared its proposed Notice to advise parties of the County’s Chapter 9 case. The Notice provides due and proper notice of the commencement of this case, of the opportunity for parties in interest to file objections to the County’s Chapter 9 petition, and of the automatic stay. The Notice further provides that, if no objection to the petition is filed prior to the Objection Deadline or if the Court overrules any objections filed with respect to the County’s petition, the Notice will constitute notice of entry of the order for relief.

19. The County proposes to publish the Notice once a week for three consecutive weeks in *The Birmingham News*, which is a “newspaper of general circulation published within the district in which the case is commenced.” 11 U.S.C. § 923. Publication in *The Birmingham News* will provide reasonable notice of the case to the residents of the County.

20. The County also proposes to publish the Notice once a week for three consecutive weeks in *The Bond Buyer*, “which is a newspaper having a general circulation among bond dealers and bondholders.” *Id.* § 923. Publication in *The Bond Buyer* will provide reasonable notice to holders and dealers of the bonds and warrants issued by the County that may be affected by the County’s bankruptcy case. The County requests the Court to designate *The Bond Buyer* as an appropriate newspaper of general circulation among bond dealers and bondholders.

21. In addition to the foregoing, the County proposes that, pursuant to Federal Rule of Bankruptcy Procedure 2002(m), the Court direct the Clerk of Court to mail a copy of the Notice to each party identified on the County's creditor matrix uploaded in this case.

22. Based upon the foregoing, the County submits that publication and mailing of the Notice in the manner described above is appropriate to serve the purposes of Section 923 of the Bankruptcy Code and will provide sufficient notice to all parties in interest of the County's Chapter 9 case.

23. The County files this Motion without prejudice to or waiver of its rights pursuant to Section 904 of the Bankruptcy Code, and nothing herein is intended as or shall be deemed to constitute the County's consent pursuant Section 904 of the Bankruptcy Code to this Court's interference with (a) any of the political or governmental powers of the County, (b) any of the property or revenues of the County, or (c) the County's use or enjoyment of any income-producing property.

WHEREFORE, PREMISES CONSIDERED, the County respectfully requests that the Court enter an order in substantially the same form as Exhibit B:

- A. Setting an Objection Deadline and establishing procedures for the filing of any objections to the County's Chapter 9 petition consistent with the procedures proposed by the County herein;
- B. Scheduling a Status Hearing to be held in the event any objection to the County's Chapter 9 petition is timely and properly filed;
- C. Approving the form of the Notice;
- D. Finding that the publication of the Notice in *The Birmingham News* and *The Bond Buyer* for three consecutive weeks and the mailing of the Notice to the parties

identified on the County's creditor matrix satisfy the requirements of Section 923 of the Bankruptcy Code;

- E. Directing the Clerk of Court to mail the Notice to the parties listed on the County's creditor matrix promptly following entry of the Court's order on this Motion;
- F. Granting such other, further or different relief as may be just and proper.

Respectfully submitted this the 9th day of November, 2011.

By: /s/ Jay Bender

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**ATTORNEYS FOR JEFFERSON COUNTY,
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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2011, a copy of the foregoing and the exhibits thereto was served upon all parties identified on the attached service list by the means specified therein.

/s/ Jay Bender

OF COUNSEL

MASTER SERVICE LIST

VIA E-MAIL:

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The Bank of New York Mellon Trust Company, N.A. (f/k/a The Bank of New York Trust Company of Florida, N.A.), as registrar, transfer agent and paying agent Attn: Charles S. Northen, IV 505 N. 20 th Street Suite 950 Birmingham, AL 35203	National Public Finance Guarantee Corp. (f/k/a MBIA Insurance Corp.), as insurer of the General Obligation Capital Improvement and Refunding Warrants, 2003-A and Series 2004-A Attn: Daniel McManus, General Counsel 113 King Street Armonk, NY 10504
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